

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

2007 JUL 20 P 3:19

DOCKETED

JUL 19 2007

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

In the matter of:

DOCKET NO. S-20539A-07-0425

KELLY J. WATERS and DANIEL B.
WATERS, husband and wife

**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF OPPORTUNITY
FOR HEARING**

KELLY'S MOBILE HOME SALES, INC.
An Arizona Corporation

Respondents.

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that RESPONDENTS KELLY J. WATERS, DANIEL B. WATERS, and KELLY'S MOBILE HOME SALES, INC. engaged in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

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I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. KELLY'S MOBILE HOME SALES, INC. ("KMHS"), is an Arizona Corporation with business addresses at 912 W. Prince Road, in Tucson, AZ 85705, and 40 W. Baseline Road, Suite 203, in Tempe, AZ 85283.

3. KELLY J. WATERS ("K. WATERS") is an individual who resides in Maricopa County, Arizona.

4. K. WATERS presents herself as the Owner of KMHS. According to public records, K. WATERS is also the President/CEO of KMHS.

5. According to public records, K. WATERS is a member of K& D Mobile Home Sales, LLC, an Arizona, LLC and also a member of Waters Investment Opportunity, LLC, another Arizona LLC. Both of these LLCs have a last known business address of 912 W. Prince Road, in Tucson, Arizona, the same as one of the addresses of KMHS.

6. KMHS maintains a website at www.mobilehomessoldbykellys.com and K. WATERS maintains an e-mail address at kellyinaz@msn.com.

7. DANIEL B. WATERS ("D. WATERS") is an individual who resides in Maricopa County, Arizona.

8. D. WATERS presents himself as the Vice President of KMHS.

9. According to public records, D. WATERS and is also the President of Mobile Home Lending, Inc. an Arizona corporation also located at 40 W. Baseline Road, Suite 203, in Tempe, Arizona 85283.

1 10. At all relevant times K. WATERS and D. WATERS have been married to each
2 other. At all relevant times K. WATERS and D. WATERS were acting for their own benefit, and
3 for the benefit or in furtherance of the marital community.

4 11. K.WATERS, D.WATERS, and KMHS may be collectively referred to as
5 "RESPONDENTS."

6 **III.**

7 **FACTS**

8 12. Upon information and belief, RESPONDENTS have been and are directly or
9 indirectly offering securities in the form of investment contracts since at least January 14, 2007.

10 13. RESPONDENTS are soliciting Arizona investors through newspapers ads. One
11 such advertisement from the January 14, 2007 edition of the Arizona Republic stated:

12 **Earn high interest on se-**
13 **cured notes- IRA's OK**
14 **Kelly 480-275-9173**

15 14. Upon dialing the published number, a potential Arizona investor ("PAI")
16 communicated with K. WATERS who described the opportunity as one in which investors purchase
17 a note on a mobile home for a dollar amount between \$15,000.00 and \$33,000.00. The note was
18 represented to be secured by a mobile home.

19 15. It was explained that when a mobile home is sold, the purchaser finances the
20 purchase by making a note that pays a very high rate of interest. K. WATERS represented to the
21 PAI that investors are paid annual returns of 12%, 15%, or 21% interest on their principal from the
22 assignment of the note.

23 16. Another ad published on May 13, 2007, in the Arizona Republic stated:

24 **Earn 15%**
25 **www.15percentsecured.com**
26 **Backed by company**
 Kelly, 480 275-9173

17. On its homepage, the advertised website at www.15percentsecured.com ("15% site")
offers investors "15% Interest on Secured Investments." The same site goes on to state:

Potential Investors: Are you currently earning a meager return on your investment from Stock Markets, Bonds, Mutual Funds or CD's?

Want to realize a huge interest return on your investment?

Earn 15% return with virtually no risk with our secured note program.

Unlike other investments that have high risks, this program offers low to no risks. It is backed with a title naming you as lien holder and by our company. If the debtor does not pay....we will!!

18. The 15% site contains the same contact phone numbers for K. WATERS as the newspaper ad referenced in ¶¶ 13 and 16 above.

19. The 15% secured website has links to two other investment opportunities that are at <http://www.21.percent.com> ("21% site") and www.selfdirectedira12percent.com ("IRA site").

20. The 21% site states:

Secured Investments @ 21% Per Annum...

This business enterprise is obtainable to private investors who desire to earn a high interest rate of 21% per annum, by purchasing notes. The notes are secured by a title naming you as first (and only) lien holder. The notes purchased are for manufactured homes....

Our company primarily serves the state of Arizona, but have investors from all over the country.

21. In addition to providing notes from borrowers, the 21% site also discusses services they provide for investors such as: 1099 tax return preparation, monthly "Lenders Financial Statements" (an accounting of payments made on the notes), securing that title to the mobile home is issued naming the investor as a lien holder.

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1 22. On the 21% site, those interested in investing are informed as follows:

2 **Interested in Investing?**

3 It is easy to get started, just provide us with the following:

4 How much you would like to invest

5 What interest rate you would like

6 Full name

7 Address

8 Phone number

9 Social Security Number (only for 1099)

10 That is it, once we have all this information, we do all the rest.

11 To find out more, type your name and email address below and
12 then click the Go button....

13 23. The contact information provided on the 21% site includes that of KMHS, K.
14 WATERS and D. WATERS. The 21% site enables investors to e-mail K. WATERS and D.
15 WATERS directly.

16 24. The IRA site states, "Break away from the low interest rate you are currently earning
17 and realize a higher interest rate is available." This site also tells investors that they have the "option
18 to direct their own IRA account and other retirement plans into a higher interest secured
19 investments."

20 25. The IRA site also contains the contact information of K. WATERS and D.
21 WATERS.

22 26. In July of 2007, a PAI who communicated with K.WATERS and D. WATERS after
23 visiting the 15% site, 21% site, and IRA site, was presented with what was claimed to be the
24 financial information of mobile home purchasers who were in need of financing. D. WATERS
25 explained that he investigates borrowers to determine their credit worthiness.

26 27. When the PAI expressed interest in investing funds the following information was
27 requested by KMHS: address, phone number, driver's license and social security number or EIN
28 and nothing more. The PAI was not asked whether he/she could sustain the loss of the investment,
29 nor was he/she asked his/her net worth. The PAI was not asked about his/her investing experience.

30 28. K. WATERS explained to the PAI that the investor's funds would be used to fund a
31 loan for a purchaser of a mobile home. After the mobile home was purchased with the investor's

1 funds, a note would be assigned to the PAI for 15%. The interest of the PAI would be secured by a
2 first lien against the mobile home. The PAI was also verbally informed that if the borrower was
3 delinquent in paying the note, KMHS would pay.

4 29. The PAI was also informed by D. WATERS that IRA funds could be invested in
5 essentially the same program. D. WATERS touted the IRA investment as very lucrative.

6 30. The PAI was provided information about KMHS' Self Directed IRA program ("IRA
7 program"). The materials indicate KMHS pays 12% in the IRA program and promises, "We pay
8 you even if the debtor (purchaser of home) does not pay!!"

9 31. Another site connected to KMHS is found at <http://lenderswanted.com> ("LW site").
10 The homepage of the LW site touts:

11
12 **We are looking for private lenders who would like to earn 15-
13 21% interest per annum, on a secured note (title as
collateral).**

14 32. The LW site also portrays two programs, one for 15% and one for 21% return and
15 describes them as being for the purchase of existing notes secured by a lien on a manufactured
16 home. The site explains that in the 15% program, KMHS closes the "Promissory Note at 21%
17 per annum. A 6% reserve fund (sole property of Kelly's MHS) will be set up to insure payments
18 to the Investor."

19 33. According to the LW site, in both the 15% and 21% programs, KMHS offers
20 notes for the investor to select from. KMHS has control over issuing the original notes and
21 selecting the borrowers. Further, KMHS takes responsibility for securing the investors' interest
22 in the mobile home.

23 34. According to the LW site, in the 15% program KMHS collects payments for the
24 investors. In the 21% program, the website indicate investors select an "accounting service" to
25 collect payments for them but, it also represents that the costs associated with this service is
26 charged to the "buyer at no cost to you."

35. The LW site urges investors to "Contact us today at kellyinaz@msn.com." Contact phone numbers are provided for a Tucson and Phoenix office. The site displays the same contact phone number for K. WATERS, as referenced in the foregoing paragraphs. The website prominently displays a photo of a "money tree." This site also contains a photo on each upper left-hand page of a handful of dollars.

36. The LW site does not require investors provide any information concerning their net worth, investment experience, or ability to sustain a loss. The only required information is the investor's driver's license, the amount to be invested and requested percent return, instructions on whom will handle accounts receivables, where to send payments, and a social security number or EIN. The site states, "THAT'S IT....IT'S EASY!"

37. None of the websites described in the paragraphs above are password protected.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer and Sale of Unregistered Securities)

38. From on or about January 14, 2007, RESPONDENTS offered or sold securities in the form of investment contracts, within or from Arizona.

39. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

40. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

41. RESPONDENTS offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

42. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

43. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

a) Guaranteeing a fixed return of 15 percent without disclosing the risk factors involved in such an investment.

b) Guaranteeing a fixed return of 12 percent without disclosing the risk factors involved in such an investment.

c) Maintaining that while they make no guarantees, KMHS pays the investor if the borrower defaults, all without providing sufficient financial information on KMHS to allow an investor to evaluate whether or not KMHS could make payments to the investor in the event of a default.

44. This conduct violates A.R.S. § 44-1991.

VII.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

THEREFORE, based on the above allegations, and because the Commission has determined that the public welfare requires immediate action,

1 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 (1) and A.A.C. R14-4-307, that the
2 RESPONDENTS, their agents, servants, employees, successors, assigns, and those persons in active
3 concert or participation with them CEASE AND DESIST from any violations of the Securities Act.

4 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
5 effect for 180 days unless sooner vacated, modified or made permanent by the Commission.

6 IT IS FURTHER ORDERED that this Order shall be effective immediately.

7 **VIII.**

8 **REQUESTED RELIEF**

9 The Division will request that the Commission grant the following relief against
10 RESPONDENTS:

11 1. Order RESPONDENTS to permanently cease and desist from violating the
12 Securities Act, pursuant to A.R.S. § 44-2032;

13 2. Order RESPONDENTS to take affirmative action to correct the conditions resulting
14 from their acts, practices or transactions, including a requirement to make restitution pursuant to
15 A.R.S. § 44-2032;

16 3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to
17 five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

18 4. Order that the marital community of K.WATERS and D.WATERS be subject to any
19 order of restitution, rescission, administrative penalties, or other appropriate affirmative action
20 pursuant to A.R.S. § 25-215; and

21 5. Order any other relief that the Commission deems appropriate.

22 **IX.**

23 **HEARING OPPORTUNITY**

24 RESPONDENTS may request a hearing pursuant to A.R.S. § 44-1972 [44-3212] and A.A.C.
25 Rule 14-4-307. **If any respondent or respondent spouse requests a hearing, the respondent**
26 **must also answer this Temporary Order and Notice.** A request for hearing must be in writing

1 and received by the Commission within 20 days after service of this Temporary Order to Cease and
2 Desist. Each RESPONDENT must deliver or mail the request for hearing to Docket Control,
3 Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. A Docket
4 Control cover sheet must also be filed with the request for hearing. A cover sheet form and
5 instructions may be obtained from Docket Control at (602) 542-3477 or on the Commission's
6 Internet web site at <http://www.azcc.gov/divisions/util/forms/>.

7 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10
8 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,
9 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**
10 **Order shall remain effective from the date a hearing is requested until a decision is entered.**
11 After a hearing, the Commission may vacate, modify or make permanent this Temporary Order,
12 with written findings of fact and conclusions of law. A permanent Order may include ordering
13 restitution, assessing administrative penalties or other action.

14 If a request for hearing is not timely made, the Division will request that the Commission
15 make permanent this Temporary Order, with written findings of fact and conclusions of law, which
16 may include ordering restitution, assessing administrative penalties or other relief.

17 Persons with a disability may request a reasonable accommodation such as a sign language
18 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,
19 Executive Assistant to the Executive Director, voice phone number 602/542-3931, e-mail
20 lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the
21 accommodation.

22 X.

23 ANSWER REQUIREMENT

24 Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE
25 requests a hearing, the RESPONDENT or RESPONDENT SPOUSE must deliver or mail an
26 Answer to this Temporary Order and Notice to Docket Control, Arizona Corporation Commission,

1 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of
2 this Temporary Order to Cease and Desist and Notice of Opportunity for Hearing. A Docket
3 Control cover sheet must accompany the Answer. A cover sheet form and instructions may be
4 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
5 at <http://www.azcc.gov/divisions/util/forms/>.

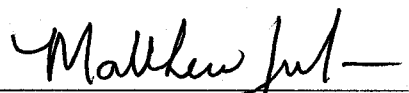
6 Additionally, the RESPONDENT OR RESPONDENT SPOUSE, must serve the Answer
7 upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by
8 mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd
9 Floor, Phoenix Arizona, addressed to Shoshana O. Epstein, Enforcement Counsel.

10 The Answer shall contain an admission or denial of each allegation in this Temporary
11 Order and Notice and the original signature of each RESPONDENT, RESPONDENT SPOUSE or
12 the RESPONDENT's attorney. A statement of a lack of sufficient knowledge or information shall
13 be considered a denial of an allegation. An allegation not denied shall be considered admitted.

14 When a RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a
15 part or a qualification of an allegation, the RESPONDENT or RESPONDENT SPOUSE shall
16 specify that part or qualification of the allegation and shall admit the remainder. The
17 RESPONDENT or RESPONDENT SPOUSE waives any affirmative defense not raised in the
18 answer.

19 The Administrative Law Judge presiding over the hearing may grant relief from the
20 requirement to file an Answer for good cause shown.

21 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 20 day of July,
22 2007.

23 
24 Matthew J. Neubert
25 Director of Securities
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